IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
April 16, 2009 Session

TENNESSEE COMMUNITY ORGANIZATIONS v. TENNESSEE DEPARTMENT OF FINANCE & ADMINISTRATION, DIVISION OF MENTAL RETARDATION SERVICES

Appeal from the Chancery Court for Davidson County
No. 08-1486-III Ellen Hobbs Lyle, Chancellor

No. M2008-02154-COA-R3-CV - Filed August 3, 2009

An association of organizations who are licensed by the State of Tennessee to provide services to people with mental retardation and developmental disabilities filed a petition for writ of mandamus seeking to compel the State agency with whom the providers contract to perform its duty under Tenn. Code Ann. § 33-5-108 to assess in writing the fiscal impact on providers of a new requirement the agency adopted. The Chancery Court for Davidson County granted the petition after having found that the association had standing to file such a petition and that issuance of a writ of mandamus was appropriate. The State appeals. We affirm the judgment of the trial court as modified.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed as Modified

RICHARD H. DINKINS, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR. and ANDY D. BENNETT, JJ. joined.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; and Dianne Stamey Dycus, Deputy Attorney General, for the appellant, Tennessee Department of Finance and Administration, Division of Mental Retardation Services.

William B. Hubbard and Robyn E. Smith, Nashville, Tennessee, for the appellee, Tennessee Community Organizations.

OPINION

I. Background

Tennessee Community Organizations ("TNCO") is an association of organizations which are licensed by the State under Title 33, Chapter 2, Part 4 of the Tennessee Code Annotated to provide services for people with mental retardation and developmental disabilities ("providers"). The

Tennessee Department of Finance and Administration, Division of Mental Retardation Services ("DMRS") is the State agency with whom the providers contract in order to receive reimbursement for the services they provide. DMRS regulates the providers primarily through their contracts with the State ("provider agreements"). The Provider Manual, incorporated by reference into the provider agreements, contains operating guidelines that include training requirements for the providers' staff.

In the past, providers fulfilled State training requirements by attending classes with teachers. In response to litigation in 2006 requiring improved community training, DMRS agreed to implement a web-based computer training program that would ensure more consistent quality training capable of being tracked and reported. Shortly thereafter, DMRS identified an online training program called College Direct Support ("CDS") owned by M.C. Strategies, Inc. that it decided to implement.[1]

In the summer of 2006, M.C. Strategies gave a presentation to the DMRS Advisory Council, a group previously formed by DMRS that was made up of "community providers and other stakeholders," about CDS and DMRS communicated its intention to implement CDS in the fall of 2006 to the TNCO board of directors. TNCO expressed concerns about the cost and logistics of implementing CDS including the cost associated with the purchase or upgrade of computer hardware, software, and technical staff as well as other logistical problems such as lack of space and access to broadband.[2]

DMRS did not implement CDS in the Fall as planned, but went ahead and issued a Request for Proposal ("RFP") for an online training program. In November 2006, TNCO wrote a letter to DMRS Deputy Commissioner Stephen Norris requesting that DMRS rescind the RFP because "DMRS had not assessed in writing the fiscal impact of online training upon community providers and had not promulgated online training as an operating guideline." Deputy Commissioner Norris refused to withdraw the RFP, but offered to meet with TNCO to discuss its concerns.

In December 2006, Deputy Commissioner Norris told providers at an Advisory Council meeting that DMRS would conduct a fiscal impact review and seek comments from providers before imposing CDS as a training requirement. Before conducting the review, however, DMRS signed a contract with M.C. Strategies to purchase CDS in January 2007.

In June 2007, DMRS established a task force of providers to study the effect of implementing CDS. Deputy Commissioner Norris instructed the task force to "determine provider access to the

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[1] DMRS had apparently identified M.C. Stategies as a proposed online training vendor in 2003.

[2] The cost of implementing CDS was the primary concern of TNCO because many of its members are small organizations formed by family members of individuals with mental retardation or developmental disabilities to provide and be reimbursed for services to those individuals. For most of TNCO's members, the reimbursements they receive from DMRS account for 95% of the funds from which they provide services. As a result, many of TNCO's members felt they were incapable of making the capital expenditures required to comply with the new online training requirements created by the implementation of CDS.

internet, provider access to computers and space for the training, and unusual or extraordinary costs to specific providers, and any other factors that may be impediments to the statewide implementation of the new training." The task force met several times in the fall of 2007 and into 2008. The task force expressed concerns to DMRS regarding the costs and other logistical problems associated with implementing CDS and, as a result, DMRS conducted a survey of providers to assess their costs and readiness to implement CDS.

On June 23, 2008, TNCO wrote a letter to Deputy Commissioner Norris requesting that DMRS complete a written assessment of the fiscal impact of CDS upon providers as required by Tenn. Code Ann. § 33-5-108. On June 26, TNCO filed a Petition for Declaratory Order with DMRS on the validity of imposing CDS without first promulgating the requirements as operating guidelines pursuant to Tenn. Code Ann. § 33-1-309(b). On July 3, Deputy Commissioner Norris expressed in a letter to TNCO that he did not believe a fiscal impact assessment was required. Also on July 3, DMRS sent the providers amendments to the Provider Manual implementing CDS retroactively to July 1, 2008. Treating the amendments as proposed changes, TNCO requested a hearing pursuant to § 33-1-309(b).[3]

On July 7, TNCO filed the present petition in the Chancery Court for Davidson County seeking the issuance of a writ of mandamus to require DMRS to make a written assessment of the fiscal impact on providers of implementing CDS as required by Tenn. Code Ann. § 33-5-108.

On July 16, Deputy Commissioner Norris wrote a letter to the chairpersons of the House and Senate Finance, Ways and Means Committees as well as to the Comptroller of the Treasury stating that DMRS had conducted a survey of providers and held numerous meetings with stakeholders to receive their input and advice concerning the implementation of CDS. The Commissioner's letter explained that in determining that the net fiscal impact to providers of all the training changes would be "negligible," DMRS considered that approximately $12 million was already built into the rates providers charge to compensate them for training expenses and that DMRS had taken steps to reduce the fiscal impact on providers by (1) eliminating three annual refresher training courses that had previously been required, (2) assisting providers with bulk purchases for computer equipment, and (3) providing the CDS software to providers at no cost for the first two years (2008-2010).

On August 1, the State responded to the petition asserting that: (1) TNCO lacked standing to enforce the duty imposed on DMRS in Tenn. Code Ann. § 33-5-108; (2) even if TNCO had standing, the petition was moot as DMRS had fulfilled its obligations under Tenn. Code Ann. § 33-5-108 in the July 16 letter to the legislature and comptroller of the treasury; and (3) even if the petition was not moot, a writ of mandamus was inappropriate.

Following a hearing, the trial court found that TNCO had standing because (1) the statutory scheme that requires DMRS consult with providers prior to making changes to program requirements is legislative recognition that the providers are "uniquely and distinctly affected" by such changes

[3] The record does not indicate whether a § 33-1-309(b) hearing was held.

and (2) there is a link between the injury, the challenged conduct, and redress in court due to the fact that "if the Department were required to make a fiscal assessment, that exercise would identify the impossibility and impracticality of certain aspects of the online training and result in the creation of waivers, exceptions or other mechanisms to make the program realistic and workable." The court also found that the July 16 letter did not constitute the written assessment required by § 33-5-108 because of the "absence of basic information, like the of [sic] dollar amounts and identification of elements of cost the providers will incur." Finally, the court acknowledged that while "the Department has discretion in how it writes up the assessment, e.g., the format and information included," it found that the fiscal impact assessment was a ministerial task and that since the statute provides no relief when this ministerial duty is not performed, the issuance of a writ of mandamus was needed.

The State appeals contending that the trial court erred in finding TNCO had standing to seek enforcement of § 33-5-108 and that a writ of mandamus was appropriate.

II. Standard of Review

Because this case was tried without a jury, our review of the trial court's findings of fact is *de novo*, accompanied by a presumption of correctness, unless the preponderance of the evidence is otherwise. *See* Tenn. R. App. P. 13(d). Our review of the trial court's determinations regarding questions of law is *de novo* with no presumption of correctness. *See Staples v. CBL Associates, Inc.,* 15 S.W.3d 83, 88 (Tenn. 2000); *Bain v. Wells*, 936 S.W.2d 618, 622 (Tenn. 1997).

III. Discussion

Standing

The doctrine of standing is employed by courts to determine whether a particular litigant has a personal stake in the outcome of the controversy to warrant the exercise of the court's power on its behalf. *See American Civil Liberties Union of Tenn. v. Darnell*, 195 S.W.3d 612, 620 (Tenn. 2006) (citing *Warth v. Seldin*, 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975)); *Metro. Air Research Testing Auth., Inc. v. The Metro. Gov't of Nashville and Davidson Cty*, 842 S.W.2d 611, 615 (Tenn. Ct. App. 1992). The doctrine, "grounded upon 'concern about the proper-and properly limited-role of the courts in a democratic society,'" precludes courts from adjudicating an action when a party's rights have not been invaded or infringed. *See Id.* (citing *Warth*, 422 U.S. at 498). In order to establish standing a plaintiff must show: (1) a distinct and palpable injury that is more than conjectural or hypothetical; (2) a causal connection between the claimed injury and the challenged conduct; and (3) that the alleged injury is capable of redress by a favorable decision of a court. *American Civil Liberties Union of Tenn. v. Darnell*, 195 S.W.3d at 620.

The primary focus of a standing inquiry is on the party, not on the merits of the claim; however, whether a party has standing "often turns on the nature and source of the claim asserted." *Metro. Air Research Testing Auth., Inc.*, 842 S.W.2d at 615. Thus, a "careful judicial examination

of the complaint's allegations to ascertain whether the particular plaintiff is entitled to an adjudication of the particular claims asserted," is required. *Id.* When the claimed injury involves the violation of a statute, as here, the court must determine "whether the . . . statutory provision on which the claim rests properly can be understood as granting persons in the plaintiff's position a right to judicial relief." *Id.* (citing *Warth*, 422 U.S. at 500). The inquiry, then, is whether the plaintiff's complaint falls within "the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." *Assoc. of Data Processing Serv. Orgs. v. Camp*, 397 U.S. 150, 153, 90 S.Ct. 827, 830, 25 L.Ed.2d 184 (1970).

TNCO's petition sought to compel DMRS' compliance with Tenn. Code Ann. § 33-5-108. TNCO contended that the statute requires DMRS to make a written assessment of the fiscal impact upon community providers of any change to the operating guidelines related to staffing in the DMRS Provider Manual. The petition alleged that on July 3, 2008, DMRS notified the providers that it was revising Chapter 7 of the Provider Manual and that the revisions included the implementation of new staff training requirements. The July 3 letter, which was attached to the petition, stated that the new web-based training program, CDS, and the related training requirements were effective as of July 1, 2008. The petition also alleged that while DMRS conducted a survey of providers' preparedness and ability to implement the new training program, DMRS did not "assess in writing" the fiscal impact of the new requirements prior to July 1. Finally, the petition alleged that "because the regulatory requirements on providers are imposed by contract, as opposed to rules, the general mechanisms for input into the regulatory process are not available to TNCO or its members"; as a result, the legislature imposed processes in §§ 33-5-108 and 33-1-309 for DMRS to follow before imposing regulatory requirements on providers. DMRS' compliance with these statutes, therefore, TNCO contended, directly impacts TNCO and its member providers.

The State argues with respect to § 33-5-108 that TNCO is not uniquely affected by the statute, rather TNCO and its members stand in the same position as the public generally since the statute serves merely a notice and oversight function between the legislative and executive branches of government. The State contends that the statute requires DMRS to transmit an estimate of the fiscal impact of changes affecting providers so that the legislative branch is made aware of the rule-making being done by the executive branch. Consequently, the State contends, only the legislature and the comptroller of the treasury are directly impacted in the event that DMRS fails to comply with the statute by being prevented from completing their oversight function.

We are not persuaded that TNCO and its members do not stand in a unique position with respect to DMRS and its compliance with § 33-5-108. This particular statutory provision relates only to rule, regulation, policy or guideline changes affecting Title 33, Chapter 2, Part 4 licensees. All of TNCO's members are such licensees and the current case involves DMRS' efforts to change the licensees' operating guidelines. Moreover, the statutory scheme [4] established by the legislature

[4] When construing statutes that are part of a statutory scheme, we are directed to look to the context of the particular provision. Our Supreme Court has made the following observation:

(continued...)

in Title 33 specifically grants TNCO a role in the rule-making process[5] with respect to changes or additions to the operating guidelines. *See* Tenn. Code Ann. § 33-1-309(b).[6] Sections 33-5-108 and 33-1-309 work together to provide sufficient information to all stakeholders, including DMRS, the legislature, the comptroller of the treasury, and TNCO (via the public records laws) in order to ensure that the rule-making process for providers regulated via contracts is meaningful and not arbitrary; the interpretation and application of these statutes is similar to the oversight and protections afforded under the UAPA.[7]

When DMRS fails to make the statutorily required written assessment of the fiscal impact of a new or changed requirement, TNCO is less able to effectively perform its legislatively assigned functions under § 33-1-309(b), including serving as a vehicle by which its members might request

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[4](...continued)
When statutory provisions are, as in this case, enacted as part of a larger Act, 'we examine the entire Act with a view to arrive at the true intention of each section and the effect to be given, if possible, to the entire Act and every section thereof. Where different sections are apparently in conflict we must harmonize them, if practicable, and lean in favor of a construction which will render every word operative.'

Hill v. City of Germantown, 31S.W.3d 234, 238 (Tenn. 2000) (quoting *Bible & Godwin Constr. Co. v. Faener Corp*. 504 S.W.2d 370, 371 (Tenn. 1974)).

[5] We use the term "rule-making process" broadly to encompass any adoption of or change to the requirements of providers contracting with DMRS whether the requirement is promulgated as a rule, regulation, policy or, as in this case, a guideline.

[6] Tenn. Code Ann. § 33-1-309(b)(1) states in pertinent part:

(A) Before adoption of operating guidelines, *the division shall provide the Tennessee Community Organizations (TNCO)* and The Arc of Tennessee *with a copy of the proposed operating guidelines* and shall post the information on its website. *TNCO shall promptly provide a copy of the proposed operating guidelines to the community providers* and ICF/MRs that are not members of TNCO and that appear on the division's web site. If, within thirty (30) days from the date the operating guidelines were provided to TNCO and the Arc of Tennessee, the division receives either, a petition from an association with at least twenty (20) members that are community providers or ICF/MRs, twenty (20) petitions from community providers or ICF/MRs, or twenty-five (25) interested persons requesting a meeting, then the division shall be required to follow the process required by this section for notice and a meeting. . . . (B) When a meeting is required, the division shall provide at least thirty (30) days written notice to TNCO and The Arc of Tennessee of the time and place of the meeting to be held on the adoption of operating guidelines and shall include the notice on its website. TNCO shall promptly provide the notice of the meeting to the community providers and ICF/MRs that are not members of TNCO and that appear on the division's web site.

Id. (emphasis added).

[7] We note that § 33-1-309(a) requires the Department of Mental Health and Developmental Disabilities "adopt all rules in accordance with the Uniform Administrative Procedures Act," and that TNCO would, consequently, have standing to seek enforcement of an administrative rule promulgated under the UAPA. *See* Tenn. Code Ann. 4-5-101 *et seq*. .

a notice of and meeting pertaining to proposed changes. Moreover, while TNCO may be able to collect some of the raw data necessary to participate in the rule-making process, it is without knowledge of the weight given to certain factors as well as information which DMRS may have considered from other sources. These represent distinct and palpable injuries that are unique from any injury suffered by the public generally. Finally, the injury, suffered by TNCO as a direct result of DMRS' noncompliance with § 33-5-108, is capable of redress by a favorable decision of a court. *See American Civil Liberties Union of Tenn. v. Darnell*, 195 S.W.3d at 620. Consequently, we find that TNCO has standing to bring the present action.[8]

Writ of Mandamus

The State contends that if this Court finds that TNCO has standing to pursue the present action, the claim must still fail on the merits. A writ of mandamus, the State contends, is inappropriate because DMRS must exercise judgment and discretion in what information is included in the written assessment. The State also contends that Deputy Commissioner Norris' letter of July 16, 2008, to the House and Senate Finance, Ways and Means Committees and the Comptroller of the Treasury stating that the Department's estimate of the fiscal impact of the CDS training requirement upon providers was negligible satisfied DMRS' obligations under § 33-5-108.

The writ of mandamus is an extraordinary remedy. *State ex rel. Witcher v. Bilbrey*, 878 S.W.2d 567, 570 (Tenn. Ct. App. 1994); *Peerless Constr. Co. v. Bass*, 158 Tenn. 518, 522, 14 S.W.2d 732, 733 (1929). Its use is only appropriate to compel a public official to perform his or her nondiscretionary, or ministerial, duties. *Tusant v. City of Memphis*, 56 S.W.3d 10, 18 (Tenn. Ct. App. 2001); *State ex rel. Witcher v. Bilbrey*, 878 S.W.2d 567 (Tenn. Ct. App. 1994). The writ of mandamus will not lie to control official judgment or discretion, but it is the proper remedy where the proven facts show a clear and specific legal right to be enforced, or a duty which ought to be and can be performed. *Tusant v. City of Memphis*, 56 S.W.3d at 18; *State ex rel. Weaver v. Ayers*, 756 S.W.2d 217, 221 (Tenn.1988); *Hackett v. Smith County*, 807 S.W.2d 695, 698 (Tenn. Ct. App. 1990).

In determining whether an act is a "ministerial act" for which mandamus may lie, courts look to whether the law defines the duties to be performed "with such precision and certainty as to leave nothing to the exercise of judgement." *Tusant v. City of Memphis*, 56 S.W.3d at 18 (Tenn. Ct. App. 2001) (quoting *Lamb v. State*, 207 Tenn. 159, 338 S.W.2d 584, 586 (1960)). Where the duty involves the exercise of discretion or judgement the act is discretionary. *Id.* A discretionary act, which will not support the issuance of a mandamus to compel performance, is defined as one done by an official

[8] Generally, an association, such as TNCO, seeking to enforce the rights of its members can only establish standing if it can show that: (1) its members would otherwise have standing to sue in their own right; (2) the interests it seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted, nor the relief requested, requires the participation of individual members in the lawsuit. *American Civil Liberties Union of Tenn. v. Darnell*, 195 S.W.3d at 626. Here, the State does not raise as an issue whether TNCO's standing, if any, is by virtue of its members' standing or in its own right and since we have found that TNCO has standing in its own right as a legislatively recognized interested party we find no need to discuss TNCO's associational standing.

who has lawful authority to determine whether or not he will perform the act. *Id.*; *Bradley v. State ex rel. Haggard*, 222 Tenn. 535, 438 S.W.2d 738 (1969).

The *Tusant* court thoroughly discussed the difference between a ministerial and a discretionary act thusly:

> Generally, where a public official has any discretion concerning the doing of an act, the issuance of a mandamus is not available. *Davis v. Fentress County Bd. Of Educ.*, 218 Tenn. 280, 402 S.W.2d 873 (1966). Where the exercise of judgment or discretion is required, the public official may be compelled by the issuance of a mandamus to perform the duty, however the official's judgment regarding the details in the performance of the duty are to be left unfettered. *Blair v. State ex rel. Watts*, 555 S.W.2d 709 (Tenn.1977). Where an official has the duty to do an act only after making determinations, evaluations or judgments, a wit of mandamus will not lie to do the act in any particular way. *Seagle-Paddock Pools of Memphis, Inc. v. Benson*, 503 S.W.2d 93 (Tenn.1973). A court will not substitute its judgment for that of an official vested with discretion unless the official has clearly acted arbitrarily and without regard to his duty in the exercise of that discretion. *See State v. Mayor & Aldermen*, 184 Tenn. 1, 195 S.W.2d 11, 13 (1946). A court will not, by mandamus, disturb the decision and action of boards and officers vested in discretionary powers, "except where they act in an arbitrary and oppressive manner [citation omitted], or act beyond their jurisdiction [citation omitted], or where they refuse to assume a jurisdiction which the law devolves upon them [citation omitted]." *Peerless Const. Co. v. Bass*, 14 S.W.2d at 732.

Tusant v. City of Memphis, 56 S.W.3d at 18-19.

TNCO asks this Court to compel DMRS to comply with the duties set forth in Tenn. Code Ann. § 33-5-108. The statute provides in pertinent part:

> The department of mental health and developmental disabilities, division of mental retardation services (DMRS), *shall assess in writing the fiscal impact* on licensees under title 33, chapter 2, part 4, of any change to any rule, regulation, policy or guideline relating to the staffing, physical plant or operating procedures of the licensee for rendering services pursuant to a contract, grant or agreement with the DMRS. Unless exigent circumstances require the change to be implemented sooner, no less than thirty (30) days before the change in the rule, regulation, policy or guideline is to take effect, *the department's estimate of fiscal impact shall be transmitted* by the deputy commissioner for mental retardation services to the finance, ways and means committee of the house of representatives, the finance, ways and means committee of the senate and the comptroller of the treasury for any appropriate review.

Id. (emphasis added).

In order to ascertain whether a writ of mandamus is appropriate, we must determine whether the § 33-5-108 establishes a clear duty to perform a ministerial task. The primary rule of statutory construction is "to ascertain and give effect to the intention and purpose of the legislature." *LensCrafters, Inc., v. Sundquist*, 33 S.W.3d 772, 777 (Tenn. 2000); *Carson Creek Vacation Resorts, Inc. v. Dept. Of Revenue*, 865 S.W.2d, 1, 2 (Tenn. 1993); *McGee v. Best*, 106 S.W.3d 48, 64 (Tenn. Ct. App. 2002). To determine legislative intent, one must look to the natural and ordinary meaning of the language used in the statute itself. We must examine any provision within the context of the entire statute and in light of its over-arching purpose and the goals it serves. *State v. Flemming*, 19 S.W.3d 195, 197 (Tenn. 2000); *Cohen v. Cohen*, 937 S.W.2d 823, 828 (Tenn. 1996); *T.R. Mills Contractors, Inc. v. WRH Enterprises, LLC*, 93 S.W.3d 861, 867 (Tenn. Ct. App. 2002). The statute should be read "without any forced or subtle construction which would extend or limit its meaning." *Nat'l Gas Distributors, Inc. v. State*, 804 S.W.2d 66, 67 (Tenn. 1991). As our Supreme Court has said, "[w]e must seek a reasonable construction in light of the purposes, objectives, and spirit of the statute based on good sound reasoning." *Scott v. Ashland Healthcare Center, Inc.*, 49 S.W.3d 281, 286 (Tenn. 2001) (citing *State v. Turner*, 913 S.W.2d 158, 160 (Tenn. 1995)).

The natural and ordinary meaning of the language of § 33-5-108 requires DMRS to perform two separate and distinct tasks. The first sentence compels DMRS to "assess in writing" the fiscal impact of any changes to any rule, regulation, policy or guideline relating to the staffing, physical plant or operating procedures of the providers. The second sentence compels the deputy commissioner of DMRS to transmit the Department's "estimate" of the fiscal impact upon providers thirty days before any such changes take effect. The State attempts to argue that the first and second sentences refer to the same document despite the legislature's use of two different words to describe the tasks to be completed. Courts are instructed to "give effect to every word, phrase, clause and sentence of the act in order to carry out the legislative intent." *Tidwell v. Collins*, 522 S.W.2d 674, 676-77 (Tenn. 1975); *In re Estate of Dobbins*, 987 S.W.2d 30, 34 (Tenn. Ct. App. 1998). Likewise, courts must presume that the General Assembly selected these words deliberately, *Tenn. Manufactured Housing Ass'n. v. Metro. Gov't.*, 798 S.W.2d 254, 257 Tenn. Ct. App. 1990), and that the use of these words conveys some intent and carries meaning and purpose. *Tennessee Growers, Inc. v. King*, 682 S.W.2d 203, 205 (Tenn. 1984); *Clark v. Crow*, 37 S.W.3d 919, 922 (Tenn. Ct. App. 2000). Consequently, we find the legislature's use of "assess in writing" in the first sentence refers to one action while the legislature's reference to the Department's "estimate" in the second sentence refers to something different, most likely something derived from exercising the duty of the first sentence – making a written assessment.

Having determined that § 33-5-108 clearly mandates DMRS perform two tasks, we also conclude that these two acts are ministerial in nature. We recognize that Deputy Commissioner Norris may use his discretion and judgment with respect to the contents of the written assessment of fiscal impact as well as the estimate that is transmitted to the legislature and the comptroller of the treasury; however, the duty to perform the acts is clearly not discretionary and, thus, subject to a writ of mandamus.

The State contends that DMRS fulfilled its duties under § 33-5-108 when it transmitted a letter on July 16, 2008, from Deputy Commissioner Norris to the appropriate members of the legislature and the comptroller of the treasury stating that DMRS had concluded that the net fiscal impact upon providers of implementing new training requirements was "negligible." We find that the transmittal of the July 16 letter only partially fulfilled DMRS' obligations under the statute. The letter satisfied the deputy commissioner's duty to transmit the Department's estimate of fiscal impact, but it did not satisfy the Department's duty to make a written assessment of the fiscal impact upon providers of the Department's changes to the providers' operating guidelines. Consequently, a writ of mandamus is appropriate to compel DMRS to perform the ministerial task of assessing in writing the fiscal impact upon providers of implementing CDS as a new training requirement. This determination does not in any way attempt to compel DMRS to make the written assessment mandated by § 33-5-108 in any particular way, *see Seagle-Paddock Pools of Memphis, Inc. v. Benson*, 503 S.W.2d 93, but merely to compel that an assessment of fiscal impact be made, in writing as directed by the statute. To the extent that the trial court's judgment concluded that the July 16, 2008, letter failed to satisfy any of the Department's obligations under § 33-5-108, the judgment is modified.

IV. Conclusion

For the above reasons, we affirm, as modified, the judgment of the trial court.

Costs of the appeal are taxed to Tennessee Department of Finance and Administration, Division of Mental Retardation Services.

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RICHARD H. DINKINS, JUDGE